

## Exhibit 75:

### James Kissinger Deposition Transcript



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Transcript of the Testimony of  
**JAMES KISSINGER**

**Date:** January 26, 2023  
**Volume:**

**Case:** John Does, Mary Doe, & Mary Roe v. Whitmer & Gasper

Printed On: February 10, 2023

JAMES KISSINGER  
1/26/2023

<p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHER DIVISION</p> <p>JOHN DOES A, B, C, D, E, F, G, H, MARY DOE and MARY ROE, on behalf of themselves and all other similarly situated,</p> <p>Plaintiffs, vs. File No. 2:22-cv-10209 Hon. Mark A. Goldsmith Mag. Curtis Ivy, Jr.</p> <p>GRETCHEN WHITMER, Governor of the State of Michigan, and COL. JOSEPH GASPER, Director of the Michigan State Police, in their official capacities,</p> <p>Defendants.</p> <p>The Remote Deposition of JAMES KISSINGER Lowell, Michigan Commencing at 11:04 a.m. Thursday, January 26, 2023 Before Gina Deskiewicz, CSR-9689, RPR.</p>	<p>1 APPEARANCES 2 3 AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN MIRIAM J. AUKERMAN (P63165) 4 1514 Wealthy SE, Suite 260 Grand Rapids, Michigan 49506 5 (616) 301-0930 maukerman@aclumich.org 6 Appearing via Zoom. 7 8 AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN UNIV. OF MICHIGAN LAW SCHOOL 9 PAUL D. REINGOLD (P27594) 802 Legal Research Building 10 801 Monroe Street Ann Arbor, Michigan 48109 11 (734) 355-0319 pdr@umich.edu 12 Appearing via Zoom. 13 14 MICHIGAN DEPARTMENT OF ATTORNEY GENERAL KRISTIN M. HEYSE (P64353) 15 SARAH E. TRUDGEON (P82155) 525 W. Ottawa Street, PO box 30217 16 Lansing, Michigan 48933 (517) 335-3055 17 heysek@michigan.gov Appearing via Zoom. 18 19 MICHIGAN DEPARTMENT OF ATTORNEY GENERAL 20 SCOTT L. DAMICH (P74126) PO Box 30754 21 Lansing, Michigan 48909 (517) 335-7573 22 damichs@michigan.gov Appearing via Zoom. 23 24 25</p>
<p>Page 1</p>	<p>Page 2</p>
<p>1 MICHIGAN DEPARTMENT OF ATTORNEY GENERAL KEITH G. CLARK (P56050) 2 PO Box 30217 Lansing, Michigan 48909 3 (517) 335-3055 ClarkK33@michigan.gov 4 Appearing via Zoom. 5 6 ACLU OF MICHIGAN DAYJA S. TILLMAN (P86526) 7 1514 Wealthy Street SE, Suite 260 Grand Rapids, Michigan 49506 8 (616) 301-0930 dstillman@ucdavis.edu 9 Appearing via Zoom. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 I N D E X 2 3 WITNESS: 4 JAMES KISSINGER 5 EXAMINATIONS PAGE 6 EXAMINATION BY MR. REINGOLD 5 7 EXAMINATION BY MR. CLARK 79 8 RE-EXAMINATION BY MR. REINGOLD 82 9 10 11 E X H I B I T S 12 (Attached to transcript.) 13 EXHIBIT NO. PAGE 14 EXHIBIT #1 28 15 -OP operating procedure 05.01.100 16 17 18 19 20 21 22 23 24 25</p>

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<p>1      Lowell, Michigan 2      January 26, 2023 3      * * * * * 4      THE REPORTER: We are going on the 5      record. It is 11:04 a.m. My name is 6      Gina Deskiewicz. I am a Notary Public for the 7      county of Macomb. I am a certified shorthand 8      reporter for the state of Michigan. 9      This deposition is being held via 10     videoconferencing equipment. The witness and the 11     reporter are not in the same room. The witness 12     will be sworn in remotely, pursuant to agreement of 13     all parties. The parties stipulate that the 14     testimony is being given as if the witness was 15     sworn in person. 16     * * * * * 17     JAMES KISSINGER, 18     was thereupon called as a witness herein, and after 19     having first been duly sworn to testify to the truth, 20     the whole truth and nothing but the truth, was examined 21     and testified as follows: 22     EXAMINATION 23     BY MR. REINGOLD: 24     Q. All right. This is a -- My name is Paul Reingold, 25     I should say to start. I'm one of the plaintiff's</p>	<p>1      counsel in this case. The case is called Doe's 2      versus Whitmer, and the underlying litigation is a 3      challenge to Michigan Sex Offender Registration 4      Act. 5      This is a rule 30(b)(6) deposition 6      pursuant to subpoena and a deposition notice. It's 7      been adjourned from a week ago, and today is 8      Thursday, January 26th, 2023, and it's a little 9      after 11:00. The witness has been sworn. 10     Let me ask, do you prefer to go by 11     James, Jim, or Mr. Kissinger? 12     A. James is preferable. 13     Q. Okay. That's great. And I go by Paul, and that's 14     fine, too. All right. 15     You've been designated by the MDOC 16     Counsel as one of the two authoritative people on 17     the issues that we're going to be deposing today. 18     What that means is that you know a lot, and I know 19     almost nothing. And so the -- at least my rule 20     today is that we transfer the knowledge that's in 21     your head into mine, so that I get brought up to 22     speed on how these processes work. 23     Let me start by asking you, have you 24     ever been deposed before? 25     A. I have not.</p>
<p>Page 5</p> <p>1      Q. That's good. I always tell me clients it can be an 2      interesting and fun experience. 3      Have you ever been a witness in a court 4      case before? 5      A. I have not. 6      Q. Okay. I'll explain just a little bit about the 7      process today. Basically I'm asking you, you know, 8      a series of questions, and you're providing 9      answers, as I said, to transfer information. If 10     you don't understand a question, please feel free 11     to stop me, and ask me to rephrase it. If you 12     answer a question, we'll assume that you understood 13     it. Okay? 14     A. Okay. 15     Q. Perfect. And then for any question, you have to 16     answer out loud; it's something we're not used to 17     doing in other settings. But if you don't answer 18     out loud, the record won't be clear, and the court 19     reporter can't take down a shake of the head, so 20     try to remember to do that. 21     The other issue is the court reporter 22     can't make a clean record if two people are talking 23     at once, and so we should try to not talk over each 24     other if we can avoid it. 25     A. Understood.</p>	<p>Page 6</p> <p>1      Q. Okay. And if you need a break at any time, let me 2      know. The only thing I ask is if there's a 3      question that's pending, that you answer it 4      beforehand. Okay? 5      A. Okay. 6      Q. Let me start by asking, did you do anything to 7      prepare for this deposition? 8      A. We did meet with the AG's representatives to 9      discuss Kristin being the -- the lead on that, I 10     believe. 11     Q. Okay. And did you review any documents? 12     A. I did review documents. 13     Q. And what sort of documents did you review? 14     A. OP 05.01.100, PD 05.01.100, MSAPP protocol, 15     Static-99R scoring manual, Stable-2007 scoring 16     manual. That is the exhaustive list that I can 17     think of at this time. 18     Q. All right. It sounds like you're up to speed. 19     Did you review any legal materials, 20     anything about the case or anything? 21     A. I did not -- well, pardon me. I did review the 22     30(b)(6) deposition to us, the questions. 23     Q. Okay. Great. Great. And then were you involved 24     at all in responding to the subpoena that we had 25     served and the materials that we requested?</p>

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<p>1       A. I am not aware. I don't know that answer.</p> <p>2       Q. Okay. No one came to you and said will you help us</p> <p>3       out with this document request? It would have been</p> <p>4       a couple weeks ago.</p> <p>5       A. We did receive a question about what documents were</p> <p>6       needed for this litigation, and I did respond to</p> <p>7       that request. I do believe that was with Kristin.</p> <p>8       Q. Okay. So you were the source for supplying some of</p> <p>9       the documents?</p> <p>10      A. Correct.</p> <p>11      Q. Or at least you suggested some?</p> <p>12      A. Correct.</p> <p>13      Q. Okay. Great. All right.</p> <p>14        What I want to do is start sort of by</p> <p>15        getting to know you, and that is your biography.</p> <p>16        And so you just walk us through your educational</p> <p>17        history from high school through whatever you</p> <p>18        finished, and what that means is schools, places if</p> <p>19        it's not obvious, dates, your major maybe, and any</p> <p>20        degrees that you have.</p> <p>21      A. Very good. In 1996 I graduated from</p> <p>22        Hope Christian School in Albuquerque, New Mexico,</p> <p>23        that was high school. 2000 I graduated from</p> <p>24        Calvin College in Grand Rapids, Michigan, with a</p> <p>25        Bachelor's degree in Criminal Justice. In 2006 I</p>	<p>1       graduated from Western Michigan University with a</p> <p>2        Master's Degree in Counseling Psychology. And did</p> <p>3        you also want my vocational history? I apologize</p> <p>4        if you already asked that.</p> <p>5       Q. Let's get to work history next. Were there any</p> <p>6        brakes along the way; did you do military service</p> <p>7        or anything like that?</p> <p>8       A. No military service.</p> <p>9       Q. Okay. And then when you finished school, can you</p> <p>10       walk us through your work history up to the point</p> <p>11       where you joined the Department of Corrections?</p> <p>12       Stop me at that point.</p> <p>13      A. Sorry, when you mean "finished school" are you</p> <p>14        referencing graduate school?</p> <p>15      Q. If there was a significant job between college and</p> <p>16        graduate school or something like that, you can</p> <p>17        include that. If, you know, you were a lifeguard</p> <p>18        somewhere and it doesn't have any bearing on what</p> <p>19        you're doing, I don't need to know.</p> <p>20      A. Well, my undergraduate -- graduation From Calvin I</p> <p>21        began work in substance use disorder assessment and</p> <p>22        treatment at Pathfinder Resources In Grand Rapids,</p> <p>23        Michigan; I served as a resident assistant and then</p> <p>24        case manager. That period was from 2000 to</p> <p>25        approximately 2003.</p>
<p>Page 9</p> <p>1       I then worked for Goodwill Industries</p> <p>2        of Greater Grand Rapids as a vocational services</p> <p>3        coordinator before becoming Northern Vocational</p> <p>4        Services Manager; I worked there until</p> <p>5        approximately 2006.</p> <p>6        In 2006 I was hired by Community Mental</p> <p>7        Health of Ionia County. I worked in the ACT,</p> <p>8        assertive community treatment team, from 2006 until</p> <p>9        2008 as a -- I don't know what my actual job title</p> <p>10       was. I believe it was case manager.</p> <p>11       And then 2008 -- April of 2008 I hired</p> <p>12       with Michigan Department of Corrections as a</p> <p>13       psychologist at the Michigan Reformatory.</p> <p>14      Q. All right. So some of that work was while you were</p> <p>15       in graduate school; is that right?</p> <p>16      A. Correct. I worked full time and went to graduate</p> <p>17       school at night.</p> <p>18      Q. That's what it sounded like. Good for you. All</p> <p>19       right.</p> <p>20       So when you arrived at the MDOC it was</p> <p>21       as a psychologist. And now can you walk us through</p> <p>22       the posts that you've had at the MDOC describing</p> <p>23       your work history again, positions, titles, places,</p> <p>24       rough dates, and core responsibilities or duties,</p> <p>25       and again, you don't need to be in graphic detail,</p>	<p>Page 10</p> <p>1       but enough to bring us up to speed.</p> <p>2       A. In 2008 I began as a psychologist at the</p> <p>3        Michigan Reformatory in Ionia, Michigan. I was</p> <p>4        part of the Psychology Services Unit, PSU. My</p> <p>5        responsibilities included running sex offender</p> <p>6        programming, SOP, and responding to mental-health</p> <p>7        related emergent issues, suicide evaluations,</p> <p>8        referrals for higher levels of mental health care.</p> <p>9        I was involved in that at the Reformatory as a</p> <p>10       psychologist under PSU until 2011, I then</p> <p>11       moved -- sorry, I need to back up.</p> <p>12       In 2011 I became Active Unit Chief of</p> <p>13       the Reformatory, I did that for one year, and then</p> <p>14       2012 I transferred to Bellevue Creek Correctional</p> <p>15       Facility as --</p> <p>16      Q. Let me just interrupt you on the last one.</p> <p>17       What does it mean to be Acting Unit</p> <p>18       Chief?</p> <p>19      A. It means that I was put in the -- It's hard for me</p> <p>20       to describe exactly what the "acting" means per</p> <p>21       civil service standards. I was placed into that</p> <p>22       role without having interviewed for the role and</p> <p>23       not -- it says maximum timeframe 12 months to be in</p> <p>24       a role for civil service guidelines. So --</p> <p>25      Q. And when you say "unit chief," is that for the</p>

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<p>1        psychological services?</p> <p>2        A. Correct, for psychological services at the</p> <p>3        Michigan Reformatory. I was a supervisor of</p> <p>4        approximately six other mental health staff.</p> <p>5        Q. Okay. You can pick up from there.</p> <p>6        A. 2012 I transferred to Battle Creek Correctional</p> <p>7        Facility to become part of the newly developed</p> <p>8        Michigan Sex Offender Program; MSOP is what it was</p> <p>9        formerly titled during that time. I worked at</p> <p>10      Bellevue Creek Correctional Facility in the MSOP</p> <p>11      program as a therapist, evaluator, and trainer,</p> <p>12      until I -- I was hired as State Administrative</p> <p>13      Manager for Sexual Abuse Prevention Services in</p> <p>14      June of 2017, and that is the role I currently</p> <p>15      serve in.</p> <p>16      Q. All right. So you've been doing that for six years</p> <p>17      or so now?</p> <p>18      A. Correct.</p> <p>19      Q. And in that role do you still do hands-on work</p> <p>20      either with prisoners or doing assessments, or are</p> <p>21      you now mostly an administrator and a policy</p> <p>22      person?</p> <p>23      A. Primarily administrator, policy, protocol,</p> <p>24      operating procedure-level work, however, I'm</p> <p>25      heavily involved in reviewing cases to ensure valid</p>	<p>1        and reliable assessments, as well as going to</p> <p>2        facilities and gauging group therapy with staff to</p> <p>3        ensure the quality of our program.</p> <p>4        Q. All right. Let's -- That's exactly what I wanted</p> <p>5        to know. So that's very, very helpful to me.</p> <p>6        What approximate percentage of your</p> <p>7        time do you spend working with people or with</p> <p>8        employees who are focusing on people who committed</p> <p>9        sexual offenses; is it almost all your time?</p> <p>10      A. Approximately 70 percent of my time is focused on</p> <p>11      working with individuals providing direct care.</p> <p>12      Q. All right. All right. In this deposition I'm</p> <p>13      going to use the word "registrants" to refer to the</p> <p>14      part of the population that we're focusing on</p> <p>15      today, people with sex convictions. And that's</p> <p>16      because in this litigation, all 50,000 Michigan</p> <p>17      registrants are our clients; they're all part of</p> <p>18      this last action.</p> <p>19      For purposes of this dep, when I use</p> <p>20      the word "registrants" I'm really referring</p> <p>21      primarily to incarcerated registrants because</p> <p>22      that's whom we're going to be discussing, as</p> <p>23      opposed to other people who are registrants but are</p> <p>24      living on the outside, not in prison.</p> <p>25      I can also tell you over the years that</p>
<p>Page 13</p> <p>1        I've sued the MDOC many times, which we have not</p> <p>2        done here, so I've learned a little bit about how</p> <p>3        the department operates, and over the years I've</p> <p>4        made some pretty good friends with MDOC folks along</p> <p>5        the way, I've had some directors and parole board</p> <p>6        shares who wound up, after retirement, serving as</p> <p>7        either expert witnesses or doing declarations on</p> <p>8        behalf of the plaintiffs in some of the cases.</p> <p>9        All right. Let's move along to sort of</p> <p>10      organization and staffing. Can you describe</p> <p>11      the -- the structure as it were of -- of the work</p> <p>12      that you're doing; is it viewed as part of health</p> <p>13      care services, is it viewed as -- What is it viewed</p> <p>14      as; how does it fit into the structure of the</p> <p>15      department?</p> <p>16      A. Sexual Abuse Prevention Services, that is the unit</p> <p>17      that I manage, it's under behavioral health care</p> <p>18      services in the department, and then under</p> <p>19      behavioral health care services, under mental</p> <p>20      health services.</p> <p>21      Q. All right. So it's -- it's viewed as fitting in</p> <p>22      the -- on the medical side, basically?</p> <p>23      A. Correct.</p> <p>24      Q. Yeah. Okay. And how big is the unit, total number</p> <p>25      of employees?</p>	<p>Page 14</p> <p>1        A. We have 27 dedicated FTE's, full time</p> <p>2        equivalencies, for prison-based staff. Within</p> <p>3        SAP's administration I currently have 4 dedicated</p> <p>4        FTE's.</p> <p>5        Q. All right. And are those the people who are doing</p> <p>6        the assessments and -- are running the programming,</p> <p>7        or is that delegated further down?</p> <p>8        A. Those -- The 27 FTE's dedicated for correctional</p> <p>9        facilities and administration are the ones running</p> <p>10      the therapy programs. Administrative staff that I</p> <p>11      have, including Corey Spickler, are responsible for</p> <p>12      both community operations as well as management of</p> <p>13      data related to our MSAPP groups for CFA staff.</p> <p>14      Q. What is CFA?</p> <p>15      A. Correctional Facilities Administration.</p> <p>16      Q. Okay. One of the hardest things going through the</p> <p>17      augmenting procedures is the number of acronyms.</p> <p>18      Right?</p> <p>19      A. Absolutely.</p> <p>20      Q. And it sounds like as far as the chain of command</p> <p>21      is concerned, you're at the top of this unit.</p> <p>22      So who are you supervised by, and what</p> <p>23      is the chain of command going up?</p> <p>24      A. I'm supervised by Mental Health Director</p> <p>25      David Dawdy, and Mental Health Director Dawdy</p>

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<p>1       reports to Health Services Administrator 2       Marti K. Sherry. 3       Q. Okay. 4       A. I would like to clarify part of my response related 5       to the assessments. 6       Q. Yes. 7       A. The 27 FTE's are responsible for the operations of 8       group therapy programs. The evaluations, the 9       sexual offense risk evaluations, are completed by 10      mental health staff across the state. 11      Q. And when you say "mental health staff across the 12      state," is that MDOC employees, or is that largely 13      contracted out? 14      A. It's largely MDOC employees. We do have contracted 15      staff that work for the MDOC inside our 16      correctional facilities that complete some of those 17      evaluations. 18      Q. All right. And what are the numbers for those 19      people, both groups, both the ones that are 20      employees and the contract people that might be? 21      A. We currently have approximately 150 mental health 22      staff across the state who have been trained in the 23      Static-99R, which would make them eligible to make 24      them engage in the assessment process. 25      Q. All right. So that means you've got a lot of</p>	<p>1       people out there doing assessments? 2       A. Correct. Well -- 3       Q. Okay. I'm sure it's not -- It's never enough. 4       Right? 5       A. Right. 6       Q. Okay. All right. What I'm trying to do is get 7       a -- get a sense of how registrants, people who 8       have committed sexual offenses, are processed and 9       treated the same as other prisoners, and how much 10      they're treated differently as to they're tracked 11      into assessment and programming. 12      So I want to start at the beginning 13      with intake, the process when they arrive at an 14      MDOC facility after having been convicted of a 15      sexual crime. I've got some preliminary questions 16      about that first, just because I haven't been 17      involved in prison litigation for a while, and so 18      I'm not current on how intake is being done. 19      So at present, in 2023, are all 20      prisoners coming into the -- into MDOC facilities 21      steered to certain intake centers, or can intake 22      occur anywhere? 23      MS. HEYSE: So I'm going to actually 24      object. I'll give you a little bit of leeway, but 25      I'm going to keep you in your topics, and don't go</p>
<p>Page 17</p> <p>1       into any discussion about general intake processes 2       or any of those types of procedures. 3       So I'll let James answer this question, 4       but I don't want to dive too far into topics 5       outside of what you designated here, because that's 6       the purpose of the notice related to us. Okay? 7       MR. REINGOLD: All right. Yeah. Part 8       of what I'm trying to do is get context so we all 9       know, you know, where things occur. And I'm not 10      going to ask substantive questions about, you know, 11      how it's done or that sort of thing. 12      MS. HEYSE: Okay. 13      A. I can not speak authoritatively to where all the 14      intakes occur at. 15      BY MR. REINGOLD: 16      Q. All right. I guess what I want to know is, where 17      are registrants -- where is their intake done, is 18      that centralized or is that -- also can it be any 19      of the places where intakes are done? 20      A. Again, I can't speak authoritatively to where all 21      intakes are done in Department of Corrections. I'm 22      not aware if intakes are done locally or 23      100 percent. I can say the majority are completed 24      at RG&amp;C in Jackson, Michigan, registered or not, 25      but they may be completed at other facilities.</p>	<p>Page 18</p> <p>1       Q. Okay. And when people are admitted and screened, 2       are -- the registrants are admitted and screened, 3       are there certain facilities that are deemed as 4       more appropriate for them so that they wind up 5       being steered to those facilities as opposed to, 6       you know, any random prison? 7       A. What do you mean -- 8       MS. HEYSE: I'm going to object to 9       form, but go ahead and ask your question 10      clarifying, James. 11      A. What do you mean by screen? 12      Q. Once they're through the initiation process and 13      they're going to be sent out to a facility. 14      What -- What I'm asking is, are there target 15      facilities for them as opposed to, you know, any 16      old general population unit that's appropriate for 17      their classification level? 18      MS. HEYSE: Again, I'm going to object 19      to form, but you can answer if -- if you know how, 20      James. 21      A. I cannot speak to how central classification or 22      transfer coordination works to move individuals on 23      any type of timeline, whether they're registrants 24      or not. 25      Q. Yeah, I didn't mean timeline. I just meant are</p>
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<p>1       there locations that are viewed as more appropriate 2       for registrants, for people that have committed sex 3       offenses, so that they wind up being in some ways 4       either segregated or concentrated?</p> <p>5       <b>A.</b> Not for registrants. I don't know if I need to 6       push on that a little bit, but we don't distinguish 7       registrant versus non-registrant.</p> <p>8       <b>Q.</b> Okay. I'll just say for people who committed sex 9       offenses?</p> <p>10      <b>A.</b> We have five different prison facilities across the 11       State of Michigan, they're designated sites for 12       individuals who have a history of engaging in 13       sexually-motivated criminal behavior.</p> <p>14      <b>Q.</b> Go okay. That's a -- That's exactly what I wanted 15       to know. And then within those facilities are 16       registrants who have committed sex offenses, are 17       they segregated from the rest of the population in 18       their own units?</p> <p>19       MS. HEYSE: So I'm going to object. 20       Again, Paul, I'm struggling to see where this falls 21       within the topics that you've identified here. You 22       haven't even gotten into assessments. You're 23       talking about housing, placement, issues that were 24       not identified as something you wanted to talk 25       about with these folks.</p>	<p>1       So I guess I'm struggling to see how 2       that falls within these categories of topics about 3       whether or not they're segregated or not, it has 4       nothing to do with risk assessments, which is what 5       I thought we were going to talk about today.</p> <p>6       <b>MR. REINGOLD:</b> Well, what I'm trying to 7       figure out is where they go, because that's related 8       to both the risk assessment and the programming 9       that they're assigned. Okay?</p> <p>10      <b>MS. HEYSE:</b> I guess I would disagree 11       with that -- with that summary and your assumption, 12       but, again, I'm not going to allow these guys to 13       answer questions that are outside of what you asked 14       about here, because I don't see anything that talks 15       about how these people are housed, where these 16       people are placed. It talks about conducting risk 17       assessments.</p> <p>18       So if you want to talk to somebody 19       about housing decisions or placement decisions, 20       these may not be the folks that you would have to 21       talk to, and I would have to discuss that with them 22       first to identify the people you should be speaking 23       with on those topics.</p> <p>24       <b>MR. REINGOLD:</b> Well, if they're working 25       with people in this classification of, you know,</p>
<p>Page 21</p> <p>1       people that have committed sex offenses, I mean, I 2       could ask it a different way and say where do you 3       go when you do this, but all I'm trying to do is 4       figure out are they segregated.</p> <p>5       <b>MS. HEYSE:</b> I understand they may know 6       the answer, but this is not a personal deposition. 7       This is a 30(b)(6) deposition, which we get the 8       opportunity to designate who we want to speak to 9       those topics. So when we're talking about placing 10      decisions and housing decisions, just because these 11      two individuals might know the answer to that 12      question doesn't mean it's an appropriate topic for 13      discussion.</p> <p>14      So I mean, he's identified that there 15      are five facilities that they're placed at. I just 16      don't understand why you need to get into, you 17      know, what the housing process is or how 18      logistically they're housed. And if you can show 19      me on the topics where that's located then we 20      can -- we can, you know, get into that, but I think 21      that, you know, I don't think that's relevant for 22      purposes of determining how risk assessments are 23      conducted.</p> <p>24      <b>MR. REINGOLD:</b> Are you instructing him 25      not to answer?</p>	<p>Page 22</p> <p>1       <b>MS. HEYSE:</b> Yeah.</p> <p>2       <b>MR. REINGOLD:</b> Okay. All right. I 3       will move on. That was my last question on the 4       section anyway.</p> <p>5       <b>BY MR. REINGOLD:</b></p> <p>6       <b>Q.</b> I've got some other preliminary questions, although 7       these go directly to what happens when people are 8       arriving. Excuse me.</p> <p>9       My understanding is that when people 10      arrive at the facility, they've already been added 11      to the -- to the registry by -- I think by the 12      probation department at the point of sentencing or 13      soon thereafter; is that right?</p> <p>14      <b>A.</b> I do not know that answer.</p> <p>15      <b>Q.</b> Okay. Is that something that your colleague would 16      know?</p> <p>17      <b>A.</b> I do not know if he would know that answer.</p> <p>18      <b>Q.</b> Okay. That's fine. Let me ask it a different way.</p> <p>19      When people who have committed sex 20      offenses arrive at the prison, is there a unit that 21      does registration for them?</p> <p>22      <b>A.</b> I do not know that answer. We are far removed from 23      the registration process as mental health 24      assessment and treatment providers.</p> <p>25      <b>Q.</b> Okay. Okay. All right. So when people arrive and</p>
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<p>1       they've committed a registrable sex offense, how is 2       it that they get steered on to the sex offender 3       track; who -- how do they get identified as needing 4       the kind of assessments that we're going to be 5       talking about in a little while?</p> <p>6       A. The question is when people arrive, how are they 7       steered towards receiving a sex offense risk 8       assessment; is that what you're driving at me?</p> <p>9       Q. Yes.</p> <p>10      A. So when an individual arrives at RG&amp;C for intake, 11       our Static shop staffed under the office of 12       planning and research engages in a file review and 13       determines if a Static-99R can or cannot be scored 14       according to manual guidelines.</p> <p>15       If a Static can be scored, they will 16       score that Static and then update our computer 17       systems based on that Static score.</p> <p>18       Q. Okay. If someone arrives who doesn't have a 19       registerable sexual offense conviction, but they 20       have a, you know, another conviction, a non-sex 21       conviction, but one that had sexual motivation in 22       it, can they also be put on the same track?</p> <p>23       A. Correct, they can be.</p> <p>24       Q. All right. And so the screener would be looking 25       for those kinds of folks as well?</p>	<p>1       A. Correct.</p> <p>2       Q. All right. And if someone like that gets put on 3       the track, are they then, you know, sort of subject 4       to all of the same procedures or whatever as 5       someone who has a registrable sex offense, or are 6       they treated differently?</p> <p>7       A. We do not take whether the behavior is something 8       that per MCO code can place them on the registry or 9       not into consideration.</p> <p>10      Q. Okay. And is it also possible that people can get 11       on this track later in their incarceration; for 12       example, if they have a sexual misconduct in prison 13       that would reveal their needs for these kinds of 14       assessments and services?</p> <p>15      A. If an individual engages in sexually abusive 16       behavior while incarcerated, and that behavior 17       rises to the level to meet Static-99R manual 18       guidelines for scoring, we can score them and we 19       can provide treatment recommendations based on that 20       score.</p> <p>21      Q. Okay. What about people who committed a 22       registerable offense, but one that has no sexual 23       motivation? I'll give you an example.</p> <p>24       We have as one of our main plaintiffs a 25       John Doe who committed child kidnapping, but it was</p>
<p>Page 25</p> <p>1       during an armed robbery. He moved a store manager, 2       and the store manager happened to have a child with 3       her, and he pushed them into a room, you know, 4       where the money was.</p> <p>5       Is someone like that eligible for a 6       Static-99 or not?</p> <p>7       A. I can't speak to the individual case because I'm 8       not aware of the actual behaviors involved. I can 9       speak to the -- The Static does not take 10       registration into consideration to determine 11       whether or not we can score it. It's 12       behavioral -- the criminal behaviors, the 13       motivations for it is what we take into 14       consideration.</p> <p>15       Q. All right. So the reason then the non-sex offense 16       that's considered registrable isn't going to wind 17       up being screened is because the Static-99 isn't 18       norm for those people and, so as you said, you 19       can't do the assessment, doesn't make any sense?</p> <p>20       MS. HEYSE: I'm going to object to 21       form, but you can answer, James.</p> <p>22       A. So the -- You said the reason it is not screened. 23       We would review based on the identified MCO code to 24       make a determination about whether or not that 25       Static can be scored. Again, we're looking at the</p>	<p>Page 26</p> <p>1       behaviors the individual engaged in to make a 2       determination about potential risk and needs that 3       are amenable to treatment and supervision.</p> <p>4       Q. All right. I think what I want to do now is turn 5       to the operating procedure that you were talking 6       about, so let me share my screen. It should work. 7       And I've done some highlighting, which is mostly 8       for my purposes, but it may help all of us. Can 9       you see that?</p> <p>10      A. No, I cannot.</p> <p>11       MS. HEYSE: I'm not seeing anything. 12       Paul. Yeah.</p> <p>13       Q. Oh, sorry. I forgot to hit the share button. Just 14       a second. Now?</p> <p>15       A. Yes, I can see the screen.</p> <p>16       Q. So this is -- We'll have this marked as Exhibit 1, 17       which is OP operating procedure 05.01.100. It's 18       dated 8/29/22, and if anyone needs to know, it's a 19       19-page document which are MDOC Bates numbers 6 20       through 24.</p> <p>21       MARKED FOR IDENTIFICATION 22       EXHIBIT #1 23       11:38 a.m.</p> <p>24       Q. Let's just take it from the top. 25       It says at the very first line of it is</p>

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<p>1 that the -- "To accurately assess, recommend, and  2 provide evidence-based programming to eligible  3 prisoners prior to their release to the -- into the  4 community."</p> <p>5 That's the -- the purpose of this  6 operating procedure. What is "evidence-based  7 programming," or at least what does it mean to you?</p> <p>8 A. That would require a relatively long explanation; I  9 will do my best to keep it short. Evidence-based  10 programming incorporates actuarially-tied,  11 research-driven risk assessment, criminogenic needs  12 assessment, and responsivity addressed for the  13 individual.</p> <p>14 So it's referred to as the risk, need,  15 responsivity framework, that is what we employ  16 within the Michigan Sexual Abuse Prevention Program  17 within our facilities, as well as within our  18 community.</p> <p>19 Q. And my understanding is that this is something that  20 the MDOC emphasizes, almost any operating procedure  21 or policy director that you open that has to do  22 with assessment and programming will start with a  23 line similar -- similar to this.</p> <p>24 Is this a break from the past, or is  25 this something the department has been doing for</p>	<p>1 quite a while?</p> <p>2 MS. HEYSE: I'm going to object to  3 form, but you can answer if you can.</p> <p>4 A. I can speak to within the -- the sexual abuse  5 prevention services realm for the past, but I  6 cannot speak outside of that.</p> <p>7 Q. That's fine.</p> <p>8 A. Historically, the Michigan Department of  9 Corrections followed a one-size-fits-all model  10 which was driven by MCO code to provide sex  11 offender treatment. Historically, we employ  12 subjective risk assessment to determine individuals  13 likelihood of engaging further in sexually  14 motivated offenses. That -- We do not do either  15 one of those things within the MSAPP program  16 anymore, inside our facilities, or in our  17 community.</p> <p>18 Q. When did the switchover occur; I assume it was  19 gradual, but when did it occur?</p> <p>20 A. The change to incorporating actuarially-tied  21 relative risk assessment tools began with use of  22 the VASOR, the Vermont Assessment of Sex Offender  23 Risk, in 2009. Then we moved to use of the  24 Static-99R in approximately 2010-2011 timeframe.</p> <p>25 Q. All right. So it's fair to say that it's been</p>
<p>Page 29</p> <p>1 roughly 14 years that you've been using  2 evidence-based instruments?</p> <p>3 A. Correct.</p> <p>4 Q. All right.</p> <p>5 A. As far as the one-size-fits-all model programming,  6 MSAPP was introduced in 2012, it ran along side the  7 old SOP program, and was gradually phased out with  8 full MSAPP implementation occurring in 2017.</p> <p>9 Q. All right. Thank you for you that. That was very  10 helpful. Let's slide down a little bit on the  11 document.</p> <p>12 All right. So on the operating  13 procedure number one, when we get to the menu of  14 assessments it says "actuarial and research-based  15 risk assessment tools are utilized by the  16 department to identify the risks and needs of every  17 prisoner. Results of the assessment are utilized  18 to assist in making program recommendations, to  19 assist in making parole supervision and case  20 management determinations."</p> <p>21 Say a little more about the actuarial  22 parts of these tools; what does that mean; who is  23 doing what that makes it actuarial?</p> <p>24 A. I will speak to that, however, I do know that  25 Corey Spickler is a Static-99 trainer, and will be</p>	<p>Page 30</p> <p>1 able to spoke to this more eloquently than myself.  2 I don't know if you want to pass that question to  3 him, or I can answer it as well.</p> <p>4 Q. Give us the -- your best shot at a, you know, a  5 reasonable-degree answer.</p> <p>6 A. Very good. So by "actuarial risk assessment" we  7 are looking at a tool that has been normed with a  8 similar population that is able to classify an  9 individual's relative risk from engaging in that  10 same behavior when compared to other individuals  11 who engaged in that behavior.</p> <p>12 So it is not a measure of absolute  13 risk, it a measure of relative risk. We know that  14 individuals in certain risk categories engage at  15 higher rates of sexually motivated recidivism than  16 other individuals.</p> <p>17 So for example, we use Counsel State  18 Government's risk classification system that  19 provides level 1, 2, 3, 4A and 4B, risk  20 categorizations or bins, and we know that out of  21 100, the amount that will sector sort of a -- from  22 bin 1 is much less than the amount that will  23 recidivate that are in bin 4B. We don't know which  24 ones out of that 100 will offend, we just know  25 relative risk is greater.</p>

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<p>1 Q. What I take from that and what I want you to do is 2 tell me if I'm right or wrong. This works a lot 3 like the way life insurance companies price life 4 insurance; that is they're able to look at a whole 5 bunch of factors as to whether someone will die 6 early or late, and they can norm those factors 7 looking backwards, you know, like if it turns out 8 that bald people -- bald men, you know, die 9 younger, and it's specifically significant, I'm 10 going to pay a higher premium because I might be in 11 a higher risk category.</p> <p>12 And what they're doing is identifying 13 the fact that they have the most influence on early 14 or late death. Is that pretty much how it works?</p> <p>15 A. It appears that you've done your research. That is 16 a good analogy to utilize when you're talking 17 about risk assessments related to predicting 18 further sexually-motivated behavior.</p> <p>19 Q. All right. And my understanding is that these 20 kinds of instruments, kind of like life insurance 21 or actuarial work, get better over time because the 22 more population you look at and the longer term you 23 had to look at them, the more you can adjust the 24 norm.</p> <p>25 So, you know, in the first few years</p>	<p>1 baldness doesn't show up a lot, but by 30-years old 2 baldness is clearly significant, you're going to 3 adjust the norming to give baldness to the higher 4 rate. Is that what they're doing as they readjust 5 the scoring?</p> <p>6 A. By "better," what are you referencing?</p> <p>7 Q. I mean more accurate.</p> <p>8 A. So better validity?</p> <p>9 Q. Yes, better validity, higher predictability of 10 value.</p> <p>11 A. I would say that is -- that is accurate over time 12 with more research, larger norming groups. At 13 least I can speak to the Static from its original 14 development to its current form has evidence and 15 proved areas under the curved values over time.</p> <p>16 Q. Okay. All right. And this explains why these 17 kinds of assessment tools are used a high priority 18 for the department, right, compared to what was 19 being used in the past, we know that these are 20 statistically validated and create 21 risk -- identifiable risk?</p> <p>22 MS. HEYSE: Object to form and 23 foundation, but you can answer.</p> <p>24 A. I can't speak to the department's motivations at 25 large outside of the MSAPP program or SAPP's</p>
<p style="text-align: center;">Page 33</p> <p>1 programming in general. Within SAPP's programming 2 we are very interested in ensuring valid and 3 reliable assessment information and provide it to 4 all of our stakeholders, if that answers your 5 question.</p> <p>6 Q. It does. So I mean, I take it that if you have a 7 choice of evidence-based tools to use or 8 nonevidence-based tools, the -- the overwhelming 9 preference would be to make the evidence-based 10 tools the -- the primary thing that you're using?</p> <p>11 A. For SAPP's purposes, absolutely, yes, we want to go 12 with what the science says works.</p> <p>13 Q. All right. Now I want to move on to the -- the 14 list of tools that are available. My first 15 question is, are all of the ones that are listed 16 below -- let's see, except for COMPAS -- are 17 these -- are all of these used at least some of the 18 time at the front end like close to intake or as 19 part of intake or initial screening, or are some of 20 them used more often or more regularly later on?</p> <p>21 A. I -- Sorry. Go ahead, Kristin.</p> <p>22 MS. HEYSE: It's okay. Can you 23 clarify -- Are you asking in the context of the 24 Program, Paul, because I think we talked about 25 there are only certain assessments that these</p>	<p style="text-align: center;">Page 34</p> <p>1 individuals would be able to speak to, and 2 I'm -- I'm looking at some of them, and they 3 weren't ones that we had previously identified. So 4 are you asking him which ones they used or -- I 5 guess that's the point of my question.</p> <p>6 MR. REINGOLD: Mine is simply a timing 7 question. When do these get used?</p> <p>8 MS. HEYSE: Well, they'll only be able 9 to speak to the ones that they use. I mean, we had 10 that discussion prior to this deposition that they 11 weren't going to be able to speak to all 12 assessments and when they were used. They were 13 able to speak to the assessment tools they actually 14 utilized. We can provide somebody to talk about 15 the tool -- the timing of the tools that they don't 16 use if you need somebody to do that then these guys 17 aren't the ones to speak to those. So for 18 example --</p> <p>19 MR. REINGOLD: I'm not asking about 20 expertise with -- with the different tools. I'm 21 asking about when they get used. That's all.</p> <p>22 MS. HEYSE: Okay. And I -- If you're 23 asking specifically, like I can tell you we've had 24 this discussion, and that is why I told you we need 25 to bring somebody else in to talk about when some</p>

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1 of these tools were used, because these individuals  
 2 don't utilize them. I think we're speaking past  
 3 each other here, or the example I can give you is  
 4 the COMPAS. I've had conversations with these  
 5 individuals, they don't know about the ins and outs  
 6 and uses of COMPAS, they don't know when it's done  
 7 and how it's done. We would have to provide  
 8 somebody else to do that.

9 MR. REINGOLD: That's why I took COMPAS  
 10 out of this question.

11 MS. HEYSE: Okay.

12 MR. REINGOLD: I'm not asking about  
 13 COMPAS. I'm asking about the ones that apply to  
 14 people who have committed sex offenses.

15 MS. HEYSE: Okay. I think that's a  
 16 more narrow question. James, are you clear on  
 17 that, then?

18 THE WITNESS: I'm not. If you would  
 19 not mind repeating the question, please.

20 BY MR. REINGOLD:

21 Q. Yeah. All I want to know is of 2, 3, 4, and 5, are  
 22 all of those used at the front end as part of the  
 23 screening, or are some of them more likely to be  
 24 used later on?

25 A. I should note that none of these are screening

1 tools.

2 Q. You're right. I should have said assessment.

3 A. No, the Static-99 is completed at the front end.

4 Q. Okay. And are there some people who might get a  
 5 Stable-2007 at the front end?

6 A. Yes, there are some that might get the Stable-2007  
 7 at the front end.

8 Q. And what would the reasons for something like that?

9 A. The -- When an individual becomes within seven  
 10 years of their earliest release date, we request a  
 11 Stable evaluation to be completed in order to  
 12 determine their overall priority risk  
 13 categorization.

14 Q. All right. So what you're saying is -- and correct  
 15 me if I'm wrong -- is that at some point everyone  
 16 is going to get -- everyone in the group we're  
 17 talking about, people who committed sex offenses,  
 18 everyone is going to get a Stable-2007 assessment  
 19 in addition to their Static-99 within some point  
 20 within seven years of their release or parole  
 21 eligibility?

22 A. Not necessarily. There are different rules for  
 23 scoring the Static in the state. So an individual  
 24 must have a conviction on that Stable, where as the  
 25 Static can be scored on a charge only. So there

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1 are some cases where we can score Static, but we  
 2 cannot score Stable.

3 Q. Okay. All right. That makes good sense to me.  
 4 But what you're saying is everybody who has a  
 5 conviction will line up with both?

6 A. Every adult male who engaged in sexually abusive  
 7 behaviors that meets manual guidelines for scoring  
 8 will have a Static and Stable prior to parole  
 9 consideration.

10 Q. No, I -- I love that you're so careful with the  
 11 answer because that's -- it's helpful to me.  
 12 You're making clear distinctions. All right.

13 The COMPAS I want to bypass out of  
 14 difference to what your counsel has said. I can  
 15 say it appears that it's sort of the overarching  
 16 assessment for everybody, and it becomes the  
 17 document that's tied to lots of programming down  
 18 the road, but you're not the people to address that  
 19 with, so I'll bypass that.

20 So what we know is that if COMPAS is  
 21 what everybody's going to get, 2 through 6 are what  
 22 subpopulations either will or might get. And I'm  
 23 not interested in number 6 which has to do with  
 24 substance abuse, and I want to focus on number 2 a  
 25 little further down the road. And so I just want

1 to ask a few questions about 3, 4, and 5, to  
 2 distinguish them from what we will learn in a  
 3 little while about number 2.

4 Stable-2007 is described as a dynamic  
 5 risk instrument, and it's only for adult male sex  
 6 offenders. And what I want to know is can you  
 7 describe the difference between a Static assessment  
 8 instrument and a dynamic risk one?

9 A. I can. A Static risk assessment is looking at  
 10 primarily historical indicators that have been  
 11 linked through research that relate to risk for  
 12 further engagement and the behavior it's trying to  
 13 assess. So for the Static it would be for further  
 14 engagement sexually-motivated crime looking at  
 15 historical features.

16 The term "Static" itself implies stuck,  
 17 stuck in time. They are not treatment targets for  
 18 us. It's primarily -- even though some  
 19 professional judgment is required -- an objective  
 20 assessment of risk based on official criminal  
 21 justice records historical factors.

22 The Stable-2007 is looking at  
 23 personality characteristics, learned behaviors,  
 24 skill deficits, things that are linked to further  
 25 criminal behavior as well, but it involves a higher

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<p>1 level of structured professional judgement, but 2 also has very clear manual guidelines on how to 3 score. 4 So it's -- The intention there also is 5 to be dispassionate, objective in how we assess 6 criminogenic need. So it's -- Those -- The Stable 7 will -- will help us identify things to target in 8 treatment that are amenable to change, as well as 9 things that we should pay attention to while an 10 individual is on supervision that could potentially 11 be linked to further sexually-motivated criminal 12 behavior. 13 Q. And is the Stable something that might get done 14 more than once as a person's behavior changes, so 15 that in some way you can measure those changes in a 16 way that you have confidence? 17 A. Yes, the Stable is expected to change, but not 18 drastically over the course of time. 19 Q. He -- Go ahead. Sorry. 20 A. No, go ahead. That's . . . 21 Q. Is the Stable also helpful -- and I'm thinking of 22 an example, you know, I'm thinking on the margins. 23 There must be people who have, let's say, a very 24 high risk -- or let's say moderately high risk, you 25 know, Static-99 score, but very quickly people</p>	<p>1 around them and their treaters, whatever, come to 2 have great confidence in them, that even though they 3 have a high Static score, they -- they seem, you 4 know, incredibly responsible and safe. 5 Is someone like that -- Is the Stable 6 something that can then be used to get a fuller 7 picture of that person, and I assume the reverse 8 can be true as well; you might have somebody who 9 has got a really low score but it scares the hell 10 out of everybody, and you want to do a Stable to, 11 again, have more confidence in the assessment. 12 Does it get used that way? 13 MS. HEYSE: Object to form, but you can 14 answer. 15 Q. Yes, there was a lecture in the question at the 16 end. 17 A. Right. So is the question essentially if somebody 18 scares the hell out of you and their Static score 19 was low, would we do the Stable? 20 Q. Yes. 21 A. We do the Stable on anybody who meets scoring 22 criteria regardless of any emotional response to 23 the case. 24 Q. Okay. That's -- That's a good answer, too. It 25 shows me you're -- you're well trained. This is</p>
<p>Page 41</p> <p>1 what the manual requires, and you're doing it, so 2 that's good. Okay. 3 In the training for doing the Stable, 4 how long does it take to be trained? 5 A. So the training is quite a process to become -- I'm 6 trying to think how to not oversimplify this. 7 Training must be received from a SORA-certified 8 trainer. That trainer then can engage in the 9 dynamic supervision protocol, which is how the 10 Static and Stable were normed; it's referred to as 11 the trainer model. 12 So that individual who is trained by 13 what's referred as a master trainer, that requires 14 a review of all the literature for taking in an 15 exam and presenting in front of the master trainers 16 to get that certification, then that trainer 17 engages in training of staff. 18 That typically takes 8 to 10 hours to 19 complete the training, and involves case study at 20 the end to ensure that the individual who is 21 trained understood the concepts, as well as 22 continued consultation following that training. 23 Q. Is part of the training having them do, you know, 24 scoring somebody, and then having the trainer or a 25 trainer equivalent scoring, and making sure they're</p>	<p>1 coming out at the same place? 2 A. Correct. That is done at the end of all the 3 Stable-2007 trainings. 4 Q. And of the 150 people that you said are in a 5 position to do Static-99 assessments, how many of 6 them are trained to do the Stable-2007? 7 A. I cannot give you an exact answer on that. I can 8 approximate if that's -- 9 Q. That's fine. Yeah, just rough. 10 A. Within the Department of Corrections I would say 11 approximately 150 individuals have been trained to 12 utilize the Stable-2007 that are currently 13 employed. 14 Q. Okay. All right. Let's move down to the -- the 15 next instrument. I'll drop this down here. This 16 one is tough because it has the same acronym, SORA, 17 as the Sex Offender Registration Act, and I'll 18 refer to it as the SO risk assessment. 19 This is a written psychological 20 evaluation report following an interview, and it 21 can be used to support or override risk levels 22 identified in the actuarial risk instruments. 23 Does every prisoner who has committed a 24 sex offense get this evaluation? 25 A. Every prisoner who is engaged in sexually-motivated</p>

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<p>1        criminal behavior, per administrative rule, must 2        receive a SORA.</p> <p>3        Q. Okay. And is the SORA -- Let me ask it a different 4        way.</p> <p>5            Do people who haven't committed sex 6        offenses also have a psychological evaluation at 7        intake that's different from this?</p> <p>8        A. People who have not committed sexually-motivated 9        crimes?</p> <p>10      Q. Yeah, do they have a more general psychological 11      eval?</p> <p>12      A. I can't speak to what goes on outside of the 13       Sexual Abuse Prevention Services, whether it 14       qualifies as a psych eval or not.</p> <p>15      Q. Okay. And do the people who committed sex 16       offenses, do you know if they get a psychological 17       evaluation that's more general than this one, or 18       are they getting two, or just the one?</p> <p>19      A. They could potentially also receive psychological 20       evaluation depending on what the potential concerns 21       or needs are -- or concerns about response to 22       treatment or supervision maybe. I'm not aware of 23       any type of rule that we require that.</p> <p>24      Q. Okay.</p> <p>25      A. The SORA meets administrative rule requirements for</p>	<p>1        an evaluation of those engaged in sexually-abusive 2        behaviors.</p> <p>3        Q. Okay. So I take it that the -- I'll call it again 4        the SO risk assessment -- this one is not an 5        evidence-based instrument, but instead is a more 6        traditional method where someone does an interview, 7        and then based on that skill or experience or maybe 8        whatever, maybe a gut feeling says either I agree 9        with the actuarial research-based instruments, or 10       they might say I disagree and I'd recommend raising 11       or lowering the score; is that part of what's 12       happened?</p> <p>13      A. No, this is the -- The Sex Offense Risk Assessment 14       is -- is not a tool. It's a combination of the 15       Static and the Stable and Biopsychosocial 16       Evaluation put into one format. So it incorporates 17       the Static and the Stable into one format.</p> <p>18            As far as support override risk levels, 19        that is something that is not done. The risk is 20       the risk. We can support or override treatment 21       recommendations based on that risk level.</p> <p>22      Q. All right. So what you're saying is that the last 23       sentence of number 4 is not really accurate 24       anymore?</p> <p>25      A. To the best of my knowledge, no, it is not accurate</p>
<p style="text-align: center;">Page 45</p> <p>1        anymore.</p> <p>2      Q. Okay. That's great and that takes out some of my 3        questions. Okay.</p> <p>4            Does that evaluation go into the 5        person's medical or psychological record?</p> <p>6      A. It does.</p> <p>7      Q. And does it also go to the parole board at the 8        appropriate time?</p> <p>9      A. It does.</p> <p>10     Q. Okay. And so just to make sure I -- I understand, 11       virtually everybody coming in with a 12       sexually-oriented crime is going to get the SO risk 13       assessment in addition to a Static-99 as part of 14       intake or the initial process coming in?</p> <p>15     A. They do not receive a SORA at the -- at the intake, 16       no.</p> <p>17     Q. Oh, when is that done? I misunderstood.</p> <p>18     A. A SORA is typically done within two years of the 19       parole board jurisdiction date -- sorry, earliest 20       release date, not the parole board jurisdiction 21       date. Within two years of their earliest release 22       date is when a SORA is requested and administered.</p> <p>23     Q. I thought I read somewhere that parole board 24       jurisdiction and earliest release date and are the 25       same?</p>	<p style="text-align: center;">Page 46</p> <p>1      A. And see, I don't know that for sure. I do know 2       it's ERD, earliest release date.</p> <p>3      Q. Yeah. Okay. And then let's take a quick look 4       at -- on number 5, the professor. That's a 5       checklist designed to identify and summarize 6       protective and risk factors for adolescents and 7       emerging adults.</p> <p>8            Is this one an evidence-based 9        instrument, or is it more -- or not? You tell me.</p> <p>10     A. I do not believe it meets criteria to 11       be -- it's -- again, it's not a risk assessment.</p> <p>12     It was never -- Dr. Warlien{sp}, the developer, did 13       not intend it to be a risk assessment. It is a 14       treatment guide based on evidence-based principals 15       for what is effective with juvenile-only offenders.</p> <p>16     Q. And so it's mostly looking at identifying factors 17       that will steer the treater in one direction or 18       another?</p> <p>19     A. Correct.</p> <p>20     Q. When somebody comes in as an adolescent or emerging 21       adult and is in prison into adulthood, did they 22       then get the Static-99, or are adolescents and 23       emerging adults getting the Static-99 as well; is 24       that norm for young people, too?</p> <p>25     A. There's -- Sorry, there's a couple questions there.</p>

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<p>1       Q. Yeah, let me back off that.  2               Do adolescents and emerging adults get  3               the Static-99 at the front end?  4       A. How are you defining adolescents?  5       Q. I can only read what's here, so I -- I'm  6               reading -- You will have to tell me how -- how you  7               define it.  8       A. So if an individual meets criteria for scoring on  9               the Static-99R, then we will score them and utilize  10               that tool to drive treatment recommendations. If  11               an individual does not meet scoring criteria on the  12               Static-99R is what we would consider a youthful  13               offender. The professor can be used with the  14               individual during the course of treatment.  15       Q. All right. And is there an age cutoff for the  16               Static-99R?  17       A. There is an age cutoff for the Static-99R.  18       Q. And what is it?  19       A. I will need to refer to the Static manual because  20               unfortunately this is a relatively nuanced --  21       Q. Yeah, that's all right. I just wanted to know if  22               this was a -- All right.  23               So now my question is, once the person  24               passes the cutoff, will they be scheduled for a  25               Static-99R?</p>	<p>1       A. No, the age at time of engaging in sexually abusive  2               behaviors is primarily what matters for scoring the  3               Static. So if somebody is 65-years old and they  4               engaged in sexually abusive behaviors at 15 and had  5               no other history of sexually abusive behaviors, we  6               could not score the Static-99R on them.  7       Q. Yeah, I'm looking at a different way. I'm saying  8               if an adolescent comes in, can't be scored on the  9               Static-99, gets the professor, and then, you know,  10               three years later or four years later has gone from  11               adolescent or emerging adult to adult, will that  12               trigger to them getting a Static-99R?  13       A. I guess I'm still struggling to understand what  14               you're asking here.  15       Q. Well, when you told me you can't get it at the  16               front end because they're too young and it's not  17               norm for them -- or they don't meet the criteria,  18               however you want to phrase it. And now they've  19               been in prison 3 or 4 years, and have now passed  20               whatever the age limitation is. And I'm just  21               asking, does that mean now they'll get a Static-99?  22       A. No, they will not get a Static-99 at that point  23               because --  24       Q. And why not?  25       A. Because the age for consideration is based upon how</p>
<p>Page 49</p> <p>1       old they were at the time of engaging in the  2               sexually abusive behaviors.  3       Q. All right. And that's why the Static-99 is done as  4               soon as it can be after the commission of the  5               crime?  6       A. That's relatively irrelevant.  7       Q. Oh. I didn't understand your last answer then.  8       A. So again, if -- excuse me. If somebody engages in  9               a sexually motivated crime, age 14, and they come  10               to prison at age 42 --  11       Q. No, no, that's not my hypothetical anymore. My  12               hypothetical is if someone -- let's say someone  13               commits a crime at just below the Static-99 age and  14               comes into prison and gets the professor, and  15               within a couple years they're over the Static-99R  16               age.  17               Is what prevents them from then getting  18               the Static-99 is that the behavior is two years  19               back and you can't do it, or is there some other  20               reason?  21       A. What prevents the use of Static-99R is how old they  22               were at the time of engaging in the behaviors. My  23               knowledge I do think applies to your question.  24       Q. Okay. So you're saying if they meet the cutoff at  25               the time of the crime then you can't -- you can't</p>	<p>Page 50</p> <p>1       get that time back. Right; that's fixed?  2       A. It's based on how the Static was normed.  3       Q. Yeah. Yeah. I understand it now. That makes  4               sense.  5               Let's turn to the Static-99R itself.  6               You've answered a lot of the questions that I had  7               for this section about training, and I just want to  8               check to see if there's anything else that we  9               didn't cover about training.  10               I think we covered what I wanted. Oh,  11               are there any educational requirements to be  12               trained for the Static-99?  13       A. SORA defines the training requirements or the  14               requirements for the Static scoring, and there are  15               no educational obtainment requirements, it requires  16               to be trained by a certified trainer.  17       Q. Are a lot of people who are doing the training  18               within the department psychologists or clinical  19               social workers?  20       A. The -- We have at current time five trainers in the  21               Static-99R; four of them have masters degrees, one  22               has a bachelors degree.  23       Q. And the people that they're training, are a  24               significant number of them psychologists or social  25               workers, or not?</p>
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<p>1       <b>A.</b> I think you need to define "significant." The --</p> <p>2       <b>Q.</b> Well, again, we said we've got 150 people who are</p> <p>3       using this instrument. I'm just trying to get a</p> <p>4       feel for, you know, whether half of them, you know,</p> <p>5       have a -- a masters degree or something like that,</p> <p>6       or none of them.</p> <p>7       <b>A.</b> The majority of individuals who are trained in</p> <p>8       Static have a masters degree or higher; not all of</p> <p>9       them.</p> <p>10      <b>Q.</b> Okay. That's what I thought, but I'm trying to</p> <p>11      make sure I got it right. All right.</p> <p>12      If we drop further down this document</p> <p>13      to "D," in the middle of "D" it says the "case</p> <p>14      plan" -- which I think is the COMPAS case</p> <p>15      plan -- "provides the prisoner with an outline of</p> <p>16      programing based on his or her needs" and so on.</p> <p>17      But then it says "as identified by an</p> <p>18      actuarial risk assessment, for example COMPAS or</p> <p>19      Static-99R, etcetera, it will be completed during</p> <p>20      the presentence investigation prior to his or her</p> <p>21      incarceration, and then also prior to release on</p> <p>22      parole."</p> <p>23      That suggests to me that the great</p> <p>24      majority of COMPAS and Static-99R assessments are</p> <p>25      being done before people arrive at the prison. And</p>	<p>1       that came as a surprise to me if it's true, because</p> <p>2       in other places, including above, I thought the</p> <p>3       menu of things we were looking at were things that</p> <p>4       were likely to occur in the prison.</p> <p>5       So my question is what percentage of</p> <p>6       the Static-99R's are done in field around the time</p> <p>7       of sentencing and the completion of the PSI, and</p> <p>8       what percentage are done when people arrive at the</p> <p>9       prison?</p> <p>10      <b>A.</b> To my knowledge those that are sentenced to prison</p> <p>11      do not get them done during the presentence</p> <p>12      evaluation, they are done upon their arrival at</p> <p>13      RG&amp;C.</p> <p>14      <b>Q.</b> Okay. So again, the green highlighting in "D" is</p> <p>15      probably either out of date or just plain wrong?</p> <p>16      <b>A.</b> I did not write that, so I can't -- To the best of</p> <p>17      my knowledge they are completed at RG&amp;C.</p> <p>18      <b>Q.</b> Okay. That's certainly what I'm -- I mean, people</p> <p>19      doing PSI's have more than enough to do, but it</p> <p>20      seemed bizarre to me that they would also be doing</p> <p>21      COMPAS or Static-99R's at that time.</p> <p>22      To make sure I've got this right, is it</p> <p>23      fair to say that the -- the vast majority of people</p> <p>24      coming into prison with a sexual offense or</p> <p>25      equivalent, that would make them eligible to be</p>
<p>Page 53</p> <p>1       assessed with a Static-99R, arrived without that</p> <p>2       having been done?</p> <p>3       <b>A.</b> That would be fair to say.</p> <p>4       <b>Q.</b> All right. And that means in some respects you</p> <p>5       have more control over the process, and virtually</p> <p>6       all of the assessing that's being done is being</p> <p>7       done by highly-trained professionals whom you had</p> <p>8       trained and who have been trained by the agency</p> <p>9       that administers the Static-99R itself?</p> <p>10      MS. HEYSE: Object to form, but you can</p> <p>11      answer, James.</p> <p>12      <b>A.</b> Trained -- The Static-99R's are primarily completed</p> <p>13      Static shop staff out of the central office, which</p> <p>14      is a smaller group of individuals than the 150 that</p> <p>15      are trained. They are trained according to SORA</p> <p>16      criteria.</p> <p>17      <b>Q.</b> All right. Okay. So there's a second group of</p> <p>18      people who also do Static-99R's at intake who have</p> <p>19      been fully trained, but they're not under your</p> <p>20      hospice, they're in a separate unit?</p> <p>21      <b>A.</b> Correct.</p> <p>22      <b>Q.</b> All right. And are those periodically reviewed by</p> <p>23      your office, anything like that?</p> <p>24      <b>A.</b> There's no formal review process in place</p> <p>25      for -- between behavioral health care services and</p>	<p>Page 54</p> <p>1       offices of planning and research for reviewing</p> <p>2       validity or liability if the Static course is</p> <p>3       completed by the Static shop.</p> <p>4       <b>Q.</b> Okay. And how many people are doing that?</p> <p>5       <b>A.</b> How many employees in the Static shop?</p> <p>6       <b>Q.</b> Yes.</p> <p>7       <b>A.</b> Two that I'm aware of.</p> <p>8       <b>Q.</b> Okay. All right. In part of our requests to the</p> <p>9       department, we were asking about numbers of</p> <p>10      Static-99's that were completed for the entire</p> <p>11      prison population, and we were told that we could</p> <p>12      get that information, at least accurately I think,</p> <p>13      only for one year, 2022, and we said that's fine.</p> <p>14      And the answer was it was a total of 1,634</p> <p>15      Static-99Rs were completed in 2022 for 1,574 unique</p> <p>16      individuals.</p> <p>17      I understand that Static-99R's can be</p> <p>18      done at the front end as part of the intake, or</p> <p>19      will be done at the front end as part of the</p> <p>20      intake, and will also be done at the back end for</p> <p>21      purposes of parole.</p> <p>22      And so what I'm asking here is out of</p> <p>23      this number can you estimate for me the approximate</p> <p>24      percentage of the front end intake assessments</p> <p>25      versus the back end parole exit assessments?</p>
<p>1       assessed with a Static-99R, arrived without that</p> <p>2       having been done?</p> <p>3       <b>A.</b> That would be fair to say.</p> <p>4       <b>Q.</b> All right. And that means in some respects you</p> <p>5       have more control over the process, and virtually</p> <p>6       all of the assessing that's being done is being</p> <p>7       done by highly-trained professionals whom you had</p> <p>8       trained and who have been trained by the agency</p> <p>9       that administers the Static-99R itself?</p> <p>10      MS. HEYSE: Object to form, but you can</p> <p>11      answer, James.</p> <p>12      <b>A.</b> Trained -- The Static-99R's are primarily completed</p> <p>13      Static shop staff out of the central office, which</p> <p>14      is a smaller group of individuals than the 150 that</p> <p>15      are trained. They are trained according to SORA</p> <p>16      criteria.</p> <p>17      <b>Q.</b> All right. Okay. So there's a second group of</p> <p>18      people who also do Static-99R's at intake who have</p> <p>19      been fully trained, but they're not under your</p> <p>20      hospice, they're in a separate unit?</p> <p>21      <b>A.</b> Correct.</p> <p>22      <b>Q.</b> All right. And are those periodically reviewed by</p> <p>23      your office, anything like that?</p> <p>24      <b>A.</b> There's no formal review process in place</p> <p>25      for -- between behavioral health care services and</p>	<p>1       offices of planning and research for reviewing</p> <p>2       validity or liability if the Static course is</p> <p>3       completed by the Static shop.</p> <p>4       <b>Q.</b> Okay. And how many people are doing that?</p> <p>5       <b>A.</b> How many employees in the Static shop?</p> <p>6       <b>Q.</b> Yes.</p> <p>7       <b>A.</b> Two that I'm aware of.</p> <p>8       <b>Q.</b> Okay. All right. In part of our requests to the</p> <p>9       department, we were asking about numbers of</p> <p>10      Static-99's that were completed for the entire</p> <p>11      prison population, and we were told that we could</p> <p>12      get that information, at least accurately I think,</p> <p>13      only for one year, 2022, and we said that's fine.</p> <p>14      And the answer was it was a total of 1,634</p> <p>15      Static-99Rs were completed in 2022 for 1,574 unique</p> <p>16      individuals.</p> <p>17      I understand that Static-99R's can be</p> <p>18      done at the front end as part of the intake, or</p> <p>19      will be done at the front end as part of the</p> <p>20      intake, and will also be done at the back end for</p> <p>21      purposes of parole.</p> <p>22      And so what I'm asking here is out of</p> <p>23      this number can you estimate for me the approximate</p> <p>24      percentage of the front end intake assessments</p> <p>25      versus the back end parole exit assessments?</p>
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<p>1                   MS. HEYSE: So Paul, again, I don't 2                   think this falls -- This is one of the topics that 3                   we pulled out, because if we're talking numbers and 4                   statistics, that's something that's going to be 5                   handled by research.</p> <p>6                   MR. REINGOLD: I just gave you the 7                   numbers that we got, and I have the question about 8                   the numbers --</p> <p>9                   MS. HEYSE: Can I finish speaking 10                  before you jump in?</p> <p>11                  MR. REINGOLD: Yep. Sorry. Didn't 12                  mean to interrupt.</p> <p>13                  MS. HEYSE: That's okay. It's hard 14                  with Zoom going back and forth. These -- You're 15                  asking for them to identify a percentage of these 16                  numbers, and I'm suggesting you if we're talking 17                  about statistics or numbers or percentages, that's 18                  probably a question that needs to be reserved for 19                  research.</p> <p>20                  MR. REINGOLD: I'll be happy to take an 21                  "I don't know" answer if that's what it is, but if 22                  he knows, I think it's a perfectly fine question.</p> <p>23                  MS. HEYSE: But here's the principal I 24                  have with this, Paul. This is a 30(b)(6) 25                  deposition, so we're not talking James Kissinger's</p>	<p>1                   personal knowledge. You're asking the department 2                   to put up a representative that's speaking on 3                   behalf of the department about these numbers. 4                   So if you want accurate numbers, then I 5                   think we need the appropriate people designated, 6                   and we specifically asked for that to be pulled out 7                   of the topics because any numbers would have to be 8                   talked about with research. So that's our concern, 9                   is that we're blurring the lines with a 30(b)(6) 10                  dep where there's a representative speaking, and 11                  then a personal individual. 12                  I mean, he can certainly say he doesn't 13                  know in his personal capacity, but that's not 14                  really relevant for purposes of a 30(b)(6) 15                  deposition. Right?</p> <p>16                  MR. REINGOLD: What I thought I had 17                  said is that we weren't going to talk about 18                  aggregate numbers -- or we would only talk about 19                  aggregate numbers and percentages, and that what we 20                  weren't going to do was say how about, you know, 21                  not 2021 or 2020, or something like that. 22                  All I'm trying to do is figure out 23                  where the resources are going, how much goes to 24                  front end, and how much goes to back -- I can do it 25                  without numbers. I can simply say of the number of</p>
<p>Page 57</p> <p>1                   Static-99's that were done, what percentages of 2                   front end, and what percentages of back end. I 3                   don't see how that exceeds what we we're talking 4                   about.</p> <p>5                   MS. HEYSE: I thank that's a different 6                   question.</p> <p>7                   MR. REINGOLD: Let me frame it that 8                   way.</p> <p>9                  BY MR. REINGOLD:</p> <p>10                 Q. Of the total numbers of Static-99R's that are done, 11                 what percentage are done for front end assessment, 12                 and what percentage are done for back end? That's 13                 a better way.</p> <p>14                 A. So it will be hard for me to give any percentages 15                 because I have not researched that. I think I can 16                 answer this question, though, and be helpful.</p> <p>17                 The RG&amp;C statics are completed on the 18                 individual when they come in by the Static shop. 19                 All cases are screened to see if they can meet 20                 criteria for scoring. If they're scored -- If they 21                 can be scored, they are scored.</p> <p>22                 When the individual becomes within 23                 eligibility timeframes for further evaluation, 24                 whether that's a sex offender risk assessment or a 25                 Stable-2007 only, the evaluator must verify the</p>	<p>Page 58</p> <p>1                   Static scoring. So it's essentially to ensure that 2                   we are providing valid scores to our stakeholder. 3                   So it's looked at again to make sure 4                   there was nothing missed. The Static has question 5                   number 2 on the Static sometimes does require an 6                   interview, and that's reference to whether they've 7                   ever lived with a lover for two years or more. So 8                   some score changes can occur as a result of those 9                   interviews.</p> <p>10                  And the Static manual speaks to the 11                  allowance of that one-point deviation as a result. 12                  So it's essentially looked at twice to ensure that 13                  we're providing valid and reliable information.</p> <p>14                  Q. Are there any other -- Strike that. I'll return to 15                  this later. All right.</p> <p>16                  So what you're telling me is that the 17                  ones that are done originally get reviewed at the 18                  back end and might get corrected up to one point, 19                  but that didn't address even a very rough 20                  percentage as to -- as to how much is going -- I'm 21                  trying to figure out where the resources are going.</p> <p>22                  Are they mostly occurring when people 23                  come in, or -- or out of however many you do in a 24                  year, what percentage of the back end ones are 25                  being done?</p>

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<p>1     <b>A.</b> I think that question was more about how many are 2     going out on parole versus how many are coming from 3     the front door. 4     <b>Q.</b> That's what I'm asking, if you know, just roughly. 5     <b>A.</b> I do not know. 6     <b>Q.</b> Okay. That's probably how we figure it out because 7     the bottom line is everybody is getting one at both 8     ends -- or almost everyone is getting one at both 9     ends -- and so intakes or outflow would tell us the 10    answer to that; is that right? 11    <b>A.</b> Correct. Sorry, I was shaking my head like you 12    told me not to. 13    <b>Q.</b> All right. And then one other thing that was 14    unusual about the numbers was there were 60 15    repeats. It said so many were done for -- more 16    were done than the number of unique individuals. 17    And my question is, why would there 18    be -- What accounts for that; why would there be 60 19    repeats? 20    <b>A.</b> Potentially, an individual's age moved him to a 21    different bracket which would cause a change in the 22    score. 23    <b>Q.</b> All right. That's exactly what I -- what I 24    thought. So what you're saying is although the 25    Static-99R deals almost entirely with Static</p>	<p>1     features, age is not a Static feature and it can 2     change the score if enough time has passed? 3     <b>A.</b> That's correct. 4     <b>Q.</b> Okay. 5     <b>A.</b> In most cases. 6     <b>Q.</b> How much time does it take to do a Static-99 score, 7     let's say, assuming all the information you need is 8     in the file? 9     <b>A.</b> I don't know if I'm able to adequately address that 10    question outside of my own personal anecdotal 11    level. 12    <b>Q.</b> I'm looking sort of for an average time, you know, 13    if you're in training and somebody raising their 14    hand and says, you know, what's the average it 15    should take me to get one of these done assuming 16    I've got all the information? 17    <b>A.</b> The time to score Static is going to depend largely 18    upon the history of the person in front of you. 19    Somebody is on their "F" prefix and has a rather 20    extensive history, versus someone that has an 21    "A" prefix and doesn't. So the times do vary, so 22    it would be hard to kind of pigeonhole or give you 23    an exact timeframe. 24    <b>Q.</b> Can you give me an average for an easy one and an 25    average for a hard one?</p>
<p style="text-align: center;">Page 61</p> <p>1     <b>A.</b> From my own personal experience for an easy one, 2     15 minutes; for a hard one that involves 3     consultation, which the hard ones often do, up to 4     an hour. 5     <b>Q.</b> Okay. Great. All right. 6        And can you just say a short word or 7        two about how the assessor calculates the score? 8     <b>A.</b> The Static-99R? 9     <b>Q.</b> Yes. 10    <b>A.</b> According to manual guidelines. 11    <b>Q.</b> Okay. So basically you're putting checkmarks in 12    for the different factors, and then there's some 13    kind of sheet that's built into it that gives you 14    the score? 15    <b>A.</b> That is correct. It's entered into COMPAS that 16    does the tabulations automatically based on what is 17    identified as present or not. 18    <b>Q.</b> Okay. All right. And then you said that with the 19    Static-99 there are five risk levels; 1, 2, 3, 4A 20    and 4B. Do the risk levels have names in addition 21    to numbers? 22    <b>A.</b> They -- They do. 23    <b>Q.</b> And what are the five risk levels? 24    <b>A.</b> Level 1 is referred to as very low risk. Level 2, 25    below average risk. Level 3, above</p>	<p style="text-align: center;">Page 62</p> <p>1     average -- sorry -- level 3, average risk. Level 2     4A, above average risk. And level 4B, well above 3     average risk. 4     <b>Q.</b> All right. And if you -- If you're looking at the 5     scores cumulatively, do the -- do the scores wind 6     up being divided across the five risk 7     categories, will they be equally populated, or will 8     there be a concentration on one side or the other? 9     <b>A.</b> Are you asking for accurate information? 10    <b>Q.</b> No, no. I'm asking how -- how the -- the levels 11    work. You know, like if you're in college and 12    someone will say, oh, your grades are in the second 13    quintile or in the forth quintile, and all four 14    quintiles will have the same number of people in 15    them, what I'm asking is when the scores are done, 16    do they shade one way or the other, and if so, 17    which way and how much? 18    <b>A.</b> The majority of the individuals will fall within 19    the level 3 risk area. I don't know if it's a bell 20    curve precisely or not, the Static 99R's manual 21    providers risk distribution information. So that 22    information can be pulled. 23    <b>Q.</b> My understanding is that the Static-99 was -- the 24    score system in the levels were changed at some 25    point to match -- I used the phrase before, I can't</p>

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<p>1 remember what it was. But it was the same scores 2 that's used for other categories of crime to make 3 it fit a national standard. 4       Were you using a Static-99 before that 5       change? 6       A. We were. 7       Q. And at that time was the distribution within the 8       categories different than it is today after the 9       change? 10      A. That would also require referring to the Static-99R 11      2003 evaluator's workbook. I don't -- 12      Q. Do you remember if -- if it did have a -- a 13       different effect or a different distribution? 14      A. I do not. 15      Q. Okay. 16            MS. HEYSE: Paul? 17            MR. REINGOLD: Yes. 18            MS. HEYSE: Can I ask for a brief 19       break? 20            MR. REINGOLD: Sure. 21            MS. HEYSE: I just need probably less 22       than five minutes. 23            MR. REINGOLD: Okay. That's great. 24            (Off the record at 12:34 p.m.) 25            (On the record at 12:39 p.m.)</p>	<p>1       BY MR. REINGOLD: 2       Q. What's the reason that the Static-99 is done, 3       again, pre-parole? I think you said it but I'm not 4       sure I understood it. 5       A. The -- The Static is utilized to place individuals 6       into relative risk categories or bins, so we can 7       understand what their relative likelihood of 8       engaging in further sexually motivated behaviors 9       are to drive both supervision and treatment 10      responses for them. 11      Q. All right. And you said because the age is a 12       factor, it's at least looking at them all because 13       age may have changed the score? 14      A. Correct. And we need to be sure that we are 15       providing valid and reliable risk and needs 16       assessments so that review is necessary to make 17       sure. 18      Q. Yeah. You said it's the second check as well. 19       Yeah. Okay. 20      A. Correct. 21      Q. I take it it's not used in the parole decision 22       itself. Right? 23            MS. HEYSE: I'm going to object 24       because, again, that's outside of this -- the 25       parole stuff we had set aside and we --</p>
<p>Page 65</p> <p>1       MR. REINGOLD: Yeah, that's fine. I'll 2       withdraw the question. 3       BY MR. REINGOLD: 4       Q. All right. And you said that the -- that age is 5       something that can change over time. 6            What about after release; are there 7       factors post-release that the Static-99R's 8       developers have found to be sufficiently strong 9       indicators of change that they can change a 10      person's score in addition to changes due to age? 11      A. Yes, there are, and there's a -- a matrix that's 12      been developed by Dr. Carl Hanson, 13      Dr. Andrew Brakley{sp}, Dr. Helmus, and others that 14      looks at the amount of time the individual spends 15      in the community offense free, and the impact it 16      has on their risk level. 17      Q. And I assume that with the five risks categories, 18      people in the different risk categories will reach 19      what Hanson and Helmus and so on, called assistance 20      at different times; is that right? 21            MS. HEYSE: Can I just ask one question 22       for clarification; are you talking about people 23       that are still incarcerated or talking about people 24       in the community now? 25            MR. REINGOLD: We're talking about</p>	<p>Page 66</p> <p>1       post-release. 2            MS. HEYSE: Okay. I think those 3       questions are referring to Corey. I mean, I'd 4       refer to you, James, but this is where the lines 5       get blurred because we have the individual that 6       specializes in incarcerated folks, and the folks 7       that are in the community is Corey. So if you can 8       answer, James. 9            A. Corey can speak to that more precisely. 10          Q. It's less about who has less experience out in the 11       community and who has more knowledge of how the 12       Static-99 works later. And so that should be a 13       good determiner. Corey is the one who has the 14       better knowledge of the Static-99, I'll wait. 15          A. Corey is a SORA-certified Static-99R trainer, I am 16       not, so I will defer that question to him if you're 17       okay with that. 18          Q. Okay. All right. The next question goes to -- The 19       next couple of questions go to for how long the 20       current regime has existed. 21            What I'm trying to figure out is of all 22       the people who have come through the Department of 23       Corrections, how far back would we have to go 24       before we start finding people who haven't gotten a 25       VASOR or a Static-99 and would have graduated,</p>

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<p>1 would have been released without the kind of robust  2 assessment and review and programming that has been  3 in place since around 2009, and part of -- that's  4 the preface to the question. And part of the way  5 I'm thinking about it is this.</p> <p>6 In 2009 and the early 2000-teens if you  7 were implementing this more robust and  8 science-driven regime, would people -- was it  9 applied to everybody who was then in prison, or was  10 it only applied to people as they came in; so for  11 example, if you have someone who is near the end of  12 a 25-year sentence in 2014 or 2015, were they, too,  13 getting a COMPAS -- not a COMPAS -- a Static-99 and  14 a -- an SO risk assessment if they needed it, and  15 programming if they needed it before parole, so  16 that looking backwards you can say with some  17 confidence that, you know, most people in prison  18 have been getting this since when?</p> <p>19 A. Most people in prison have received a Static-99R  20 and Stable-2007 that meet criteria for scoring on  21 those tools since 2016 -- sorry, pardon me -- 2015.</p> <p>22 Q. And before that they would have gotten a VASOR, and  23 would they also have gotten an SO risk assessment?</p> <p>24 A. They would have received a VASOR and -- as well as  25 a Static from 2011 as a part of the sex offense</p>	<p>1 risk assessment process.</p> <p>2 Q. All right. So when this came -- came in, what  3 you're telling me is it ramped up pretty quickly  4 and was applied broadly to the whole population?</p> <p>5 A. I guess that depends on the definition of -- of  6 "quickly." It was a very long process  7 involving -- yeah. I wouldn't say quickly, but  8 yes.</p> <p>9 Q. Let me put it a slightly different way.  10 Did it focus on people who were  11 approaching parole so that the idea was you get  12 them assessed and you get them the programming you  13 need if they're on the way out, so the people who  14 were closest to parole in those years would be  15 getting it, which gives you more time to get to  16 everybody else?</p> <p>17 A. The -- The determination about timeframe for use of  18 that Stable is primarily driven by how long the  19 Stable is considered to be valid, which is up to  20 24 months because they didn't change over time, so  21 we wanted to make sure it was still considered  22 valid. So that really drove when we were doing  23 those SORA -- program SORA evaluations. I don't  24 know if that answers your question.</p> <p>25 Q. I think it does. Let me ask it this way.</p>
<p style="text-align: center;">Page 69</p> <p>1 Are you reasonably confident that  2 everybody who has left prison -- I shouldn't say  3 everybody -- the great majority of people serving  4 sex offenses who left prison, you know, after or  5 around 2011, something like that, got the benefit  6 of the kind of work that's being -- that was being  7 implemented then and is sort of routine today?</p> <p>8 A. No, I'm not confident in that.</p> <p>9 Q. What year would it take for you to get to --</p> <p>10 A. 2015 or 2016.</p> <p>11 Q. But everyone before that got it -- got some VASOR  12 with this?</p> <p>13 A. Correct.</p> <p>14 Q. Okay.</p> <p>15 A. Between 2011 and 2015, some the Static and the  16 VASOR.</p> <p>17 Q. Yeah. Okay. In the current system that you have,  18 what we'll call the most robust, that has been  19 applied to thousands of people now on long-term and  20 life sentences as well as people serving short  21 sentences?</p> <p>22 A. Thousands of people now, yes, I would say that  23 is -- that's accurate.</p> <p>24 Q. And at least from working at the assessment  25 instruments and the way COMPAS brings all of these</p>	<p style="text-align: center;">Page 70</p> <p>1 things together, you -- you're able to amass  2 like -- I mean, a ton of information in this  3 evaluation process, right, this assessment process?</p> <p>4 MS. HEYSE: I'm going to object to  5 form, but you can answer if you can.</p> <p>6 A. We are able to assess risk-relevant information and  7 put it into our various database systems.</p> <p>8 Q. All right. The other questions that I had, had to  9 do with programming. It looked like from the  10 document we've been reviewing that people can only  11 get into a certain number of programs, and my  12 question as to programming is if someone's been  13 identified as a sexual offender, are they almost  14 for sure going to wind up with MSAPP as their  15 primary default recommendation?</p> <p>16 A. I would not categorize it that way.</p> <p>17 Q. Okay. So how does it work?</p> <p>18 A. Based on an individual's assessment risk and needs,  19 appropriate programming is put in place for them.</p> <p>20 Q. And what I'm trying to figure out is how that  21 process works, you know. If I'm a violent offender  22 I can take violence training, if I'm a drug  23 offender I can take drug training, if I'm a sex  24 offender I can take MSAPP, but it looks like I  25 can't take more than one.</p>

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<p>1                   So one question is, is the not taking 2                   more than one because these things overlap, and if 3                   you're taking one you're getting benefits of all, 4                   or is it a limitation on slots?</p> <p>5                   MS. HEYSE: So hang on just one second 6                   before you answer, James. Paul, can you stop 7                   sharing screen because I -- I'm on one screen right 8                   now and I can't get to my own documents.</p> <p>9                   MR. REINGOLD: Oh, I'm sorry.</p> <p>10                  MS. HEYSE: That's okay. I don't think 11                  you're utilizing this at the moment. I just want 12                  to double check because, again, I don't recall 13                  specific programming being on your list of topics, 14                  but I want to double check to make sure I'm not 15                  misspeaking.</p> <p>16                  MR. REINGOLD: I believe that it did 17                  include programming, but I don't have it in front 18                  of me. But I've only got a few questions this is 19                  not going to be --</p> <p>20                  MS. HEYSE: Okay.</p> <p>21                  MR. REINGOLD: I'm just trying to 22                  figure out how people get into MSAPP and if most 23                  people wind up there. That's really the question.</p> <p>24                  MS. HEYSE: Okay.</p> <p>25                  MR. REINGOLD: Most people in this</p>	<p>1                   category.</p> <p>2                   MS. HEYSE: Okay. That's what I was 3                   going to ask you. We're not speaking solely of 4                   registrants at the moment, we're speaking 5                   generally?</p> <p>6                   MR. REINGOLD: No, we're speaking of 7                   people who are sex offenders, which is what I said 8                   who I would describe as registrants.</p> <p>9                   A. Again, it's -- we're very far removed from the 10                  court process and behavioral health care services 11                  focused on problematic behavior, so I just want to 12                  challenge that label of sex offenders or sex 13                  offense as determinates for treatment 14                  recommendations; we don't use those.</p> <p>15                  Q. We try not to use those as well. That's why I was 16                  using "registrants."</p> <p>17                  Do you have a sense of -- again, as we 18                  did before -- the approximate percentage of people 19                  who are on the register industry or committed sex 20                  offenses who wind up having MSAPP or some other 21                  form of sexually-related therapy or programming 22                  before the -- is it, you know, nearly everybody, or 23                  over 80 percent, something like that?</p> <p>24                  A. I can not speak to the aggregate data related to 25                  how many are scored as a level 1, 2, 3, 4A, or 4B,</p>
<p>Page 73</p> <p>1                  or speak on how the treatment recommendations 2                  follow along the risk assessment.</p> <p>3                  Q. Okay.</p> <p>4                  A. Maybe if an individual who is currently 5                  incarcerated is assessed as level 1, 2, or 3, that 6                  sex offense risk assessment is the end of their 7                  interactions with MSAPP. If they're assessed as 8                  level 4A, they receive between 6 and 12 months of 9                  MSAPP treatment -- or 6 to 12 months, and depending 10                 on the response treatment is when I make the 11                 determination on when we can complete them 12                 successfully or not. If they are level 4B they 13                 receive between 12 and 18 months of MSAPP therapy 14                 while they're incarcerated.</p> <p>15                  Q. All right. So that's exactly what I wanted to 16                  know. So what you're saying is all levels, 1, 2, 17                  and 3, are not being -- are not going to be steered 18                  into sexually related -- almost all aren't going to 19                  be steered into a sexually-related program, they 20                  might opt for it or try to get it later on their 21                  own, but they're not going to be pushed into it?</p> <p>22                  A. Not while they're incarcerated. We do not 23                  recommend prison-based treatment interventions 24                  for those risk levels while they're incarcerated. 25                  They will receive a new assessment and treatment</p>	<p>Page 74</p> <p>1                  when they are in the community.</p> <p>2                  Q. Or while on parole?</p> <p>3                  A. Correct.</p> <p>4                  Q. Yeah. Okay.</p> <p>5                  A. That follows along -- That follows along with the 6                  counsel state government's recommendation for 7                  treatment intensity and duration.</p> <p>8                  Q. Yeah, that's what I was trying to remember, when 9                  they re-normed the Static-99?</p> <p>10                 A. They did not re-norm it, no.</p> <p>11                 Q. They changed the risk-level categories?</p> <p>12                 A. No, that was a separate group.</p> <p>13                 Q. Oh, what was that group?</p> <p>14                 A. So the current body is referred to as SORNA that is 15                 responsible for the Static-99R, Stable-2007. The 16                 Counsel State Governments was a group of experts 17                 from around the country including Hanson and 18                 Robert McGrath, who -- their goal is to be able to 19                 recommend a common language to describe risk, as 20                 well as what does the research state is effective 21                 to reduce likelihood of that behavior. So it's two 22                 separate entities.</p> <p>23                 Q. Okay. Let's see. Do you know if the MDOC does any 24                 research on the Static-99 or these -- or others of 25                 these instruments that we've been talking about to</p>

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<p>1 measure their effective -- their efficacy just 2 within the department?</p> <p>3 A. Can you explain to me what you mean by "efficacy?"</p> <p>4 Q. Whether they're doing what you think they're doing.</p> <p>5 A. So based on actual outcomes are we aware of 6 our -- what the validity is of the tools?</p> <p>7 Q. I know they're evaluated from the outside, Hanson's 8 people are validated on the Static-99 all the time. 9 But I'm just wondering if your folks do it either 10 for MSAPP or for, you know, any of these tools 11 or programs?</p> <p>12 A. What -- That's commonly referred to as creation of 13 localized norms. We do not do that in Michigan.</p> <p>14 Q. Okay. All right. I just have a couple of 15 questions left and then we'll wrap up.</p> <p>16 It strikes me as though everything 17 you've been talking about hinges on the importance 18 of using evidence-based assessment, and whenever 19 possible evidence-based programming, and then it's 20 enhanced by carefully controlled things like the 21 Stable, or the way you're exercising judgement is 22 cabined so that it's as objective as it can be, and 23 then you also add onto that some direct clinical 24 evaluation that maybe, you know, shapes things a 25 little bit on the edges. And that's part of what I</p>	<p>1 described this as, an incredibly robust analysis. 2 Do you think that doing all this 3 prepares offenders -- sexual offenders -- or I 4 should say registrants -- for success on reentry?</p> <p>5 MS. HEYSE: I'm going to object on a 6 lot of grounds. Form and foundation, but I also 7 think, you know, are you asking him in a 8 representative capacity, Paul, because if so, 9 again, I don't know that that's a question that 10 James Kissinger can answer on behalf of MDOC.</p> <p>11 Q. I'll just -- Can you answer that or not?</p> <p>12 A. Can I answer on behalf of MDOC, do we believe the 13 robust assessment treatment program works?</p> <p>14 Q. Yes.</p> <p>15 A. I do not believe I am in a position to answer that 16 question.</p> <p>17 Q. Okay. I -- Part of what I'm trying to get at here 18 is, it seems like the whole focus of what the MDOC 19 is doing is based on science, and then when 20 registrants get out, one of the things that they're 21 facing is the SORA.</p> <p>22 To your knowledge, is the SORA itself 23 evidence based?</p> <p>24 MS. HEYSE: I'm going to instruct him 25 not to answer. That is not one of the topics or</p>
<p>Page 77</p> <p>1 questions that you asked, and again, I don't know 2 that MDOC is prepared -- I'm not prepared for him 3 to represent MDOC in response to that question, 4 Paul.</p> <p>5 MR. REINGOLD: All right. Then James, 6 I want to thank you for your time and the wealth of 7 information that you conveyed. We're done, and the 8 next dep will be a lot shorter.</p> <p>9 THE WITNESS: My pleasure, thank you 10 both.</p> <p>11 MR. CLARK: I'm sorry, Paul. 12 Keith Clark, assistant to the attorney general on 13 behalf of the Michigan State Police and the 14 governor's office in the Doe's Lawsuit. I would 15 like to ask two very brief follow-up questions, or 16 a short series of follow-up questions, based upon 17 your questions for Mr. Kissinger on behalf of the 18 Michigan State Police and the governor's office in 19 the lawsuit.</p> <p>20 MR. REINGOLD: The floor is yours.</p> <p>21 MR. CLARK: Thank you.</p> <p>22 EXAMINATION</p> <p>23 BY MR. CLARK:</p> <p>24 Q. So how are you today?</p> <p>25 A. I'm well, thank you.</p>	<p>Page 78</p> <p>1 Q. So I have some very limited questions. I want to 2 clarify something that I think that you said 3 earlier. I think there was another answer, I want 4 to clarify this.</p> <p>5 If a juvenile offender only commits a 6 sexually deviant offense as a juvenile, then come 7 to the Department of Corrections and stays there, I 8 don't know, for 30 years, is it ever appropriate to 9 use a Static-99 if there's no further sexual 10 deviant behavior?</p> <p>11 A. Do you mind defining what you mean by "deviant?"</p> <p>12 Q. Oh, I'm sorry. I'll ask you the question in a 13 better way.</p> <p>14 Can you use the Static-99 if the only 15 thing a juvenile offender does is the original 16 offense that gets him into trouble?</p> <p>17 A. So if a juvenile engages in sexually motivated 18 criminal behavior as a juvenile, can we use the 19 Static when they are now an adult?</p> <p>20 Q. Yes.</p> <p>21 A. No, we cannot.</p> <p>22 Q. Okay. Unless they commit some new sexually 23 motivated behavior?</p> <p>24 A. As an adult, correct.</p> <p>25 Q. As an adult. Okay. Thank you.</p>

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<p>1                   And the tool that you use for 2                   juveniles, is that a risk assessment tool, or is 3                   that a treatment assessment tool, or a need for 4                   treatment assessment, the SORNA? 5                   <b>A.</b> The professor is not a risk assessment tool. 6                   <b>Q.</b> Thank you. 7                   <b>A.</b> It is a treatment guide tool. 8                   <b>Q.</b> Okay. Thank you. So it doesn't assess a risk, it 9                   just determines whether or not someone would 10                  benefit from treatment? 11                  <b>A.</b> Correct. No, it is used in treatment with -- For 12                  individuals engaging in sexually motivated 13                  behaviors as a juvenile, the recidivism rate would 14                  not suggest that treatment interventions would 15                  reduce their likelihood in engaging in further 16                  sexually motivated behaviors in general. 17                  The professor it meant to build upon 18                  already protective factors for those that are 19                  placed into treatment. It's a treatment guide. 20                  <b>Q.</b> Thank you. That was very informative. And my last 21                  question involves risk assessment tools for female 22                  offenders. 23                  Does the department use any risk 24                  assessment tools for female offenders? 25                  <b>A.</b> We do not.</p>	<p>1                   <b>Q.</b> Does the Counsel of Governments, if you're aware, 2                   recommend any assessment tools for female 3                   offenders -- risk assessment tools? 4                   <b>A.</b> They do not. They do not. 5                   <b>Q.</b> Okay. Does a person's identification -- gender 6                   identification play a part in which risk assessment 7                   tool is used or whether or not you use a risk 8                   assessment tool? 9                   <b>A.</b> That's a relatively complicated question, I'll 10                  state to the best of my abilities. The Static-99R 11                  has clear scoring requirements based on 12                  individual's biological parts at time of offending. 13                  <b>Q.</b> Okay. That answers my question and ends my series 14                  of questions. Thank you very much for your 15                  answers. 16                  <b>A.</b> My pleasure. 17                  MR. REINGOLD: I have one follow up 18                  question about -- I meant to ask you about women 19                  and forgot. 20                  RE-EXAMINATION 21                  BY MR. REINGOLD: 22                  <b>Q.</b> Is the reason that women don't get assessed because 23                  this are no instruments that are normed for women, 24                  or is it also because their risk level is so low 25                  that there's no point in doing it?</p>
<p>Page 81</p> <p>1                  <b>A.</b> I attended a training by Dr. Kritana{sp} of 2                  Montreal who is known as the expert on women who 3                  engage in sexually abusive behaviors. At present 4                  time, there is not enough of recidivistic behaviors 5                  that women have engaged in that were sexually 6                  motivated to be able to norm a tool for women who 7                  engaged in sexually abusive behaviors. 8                  So it's something that potentially can 9                  happen down the road, but at present time there are 10                  no validated risk assessment tools for women who 11                  engage in sexually abusive behaviors. 12                  <b>Q.</b> It sounds like what you're saying is you need 13                  enough crime to be able to get statistically valid 14                  norms, and there aren't enough women criminals; you 15                  need more women criminals to do that? 16                  MS. HEYSE: I'm going to object to 17                  form. You can answer if you can, James. 18                  <b>A.</b> I kind of like the way -- the way he said that and 19                  also hated the way he said that. I think that's a 20                  fair characterization that there's not a large 21                  enough pool to treat a norm sample out of. 22                  MR. REINGOLD: All right. I'll leave 23                  it there and again, thank you for your time and 24                  effort. I appreciate it. 25                  THE WITNESS: My pleasure.</p>	<p>Page 82</p> <p>1                  2                  (The Examination was concluded at 2                  3                  1:07 p.m.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

JAMES KISSINGER

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1 CERTIFICATE

2 STATE OF MICHIGAN )

)

3 COUNTY OF MACOMB )

4

5 I, Gina Deskiewicz, a Notary Public  
6 in and for the above county and state, do hereby certify  
7 that this deposition was taken before me at the time and  
8 place hereinbefore set forth; that the witness was by me  
9 first duly sworn to testify to the truth; that this is a  
10 true, full and correct transcript of my stenographic  
11 notes so taken; and that I am not related, nor of  
12 counsel to either party, nor interested in the event of  
13 this cause.

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Gina Deskiewicz, CSR-9689, RPR.

21 Notary Public

Macomb County, Michigan

22 My commission expires June 14, 2027

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24

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